

# General Order

## Houston Police Department

**ISSUE DATE:**

October 3, 2018

**NO.****500-04**

**REFERENCE:** Supersedes all prior conflicting Circulars and Directives, and General Order 500-04, dated May 1, 2001

---

**SUBJECT: DRIVING WHILE INTOXICATED**

---

### POLICY

The Houston Police Department shall investigate and, if probable cause exists, arrest and charge persons who violate the driving while intoxicated (DWI) laws of the state of Texas. As part of the department's efforts to ensure the safety of members of the community and emergency responders, officers who become aware of or have knowledge of a possible intoxicated driver shall investigate the incident to determine if probable cause exists to make an arrest for DWI. This includes if the offense occurs on private property open to public use. A lesser charge of a traffic violation or public intoxication shall not be filed in lieu of the DWI charge. An officer who is found to have failed to investigate a suspected intoxicated driver shall be subject to disciplinary action up to and including indefinite suspension.

This General Order applies to all employees.

### DEFINITIONS

**Child.** A person who is 10 years of age or older and under 17 years of age.

**Minor.** A person who is under 21 years of age.

### **1** DWI FACILITY

After arresting a DWI suspect and properly disposing of the suspect's vehicle, the officer shall transport the prisoner to the nearest police facility capable of processing a DWI suspect.

An intoxilyzer facility identified by the Houston Police Department, the Texas Department of Public Safety Breath Alcohol Testing Program, or the District Attorney's Office shall be utilized for processing a DWI arrest. Unless participating in a joint DWI task force operation, the breath test shall be conducted in the same county as the arrest.

Upon arrival at the police DWI facility capable of processing a DWI suspect, the arresting officer shall:

- a. Ensure prisoners are handcuffed at all times while in the video section except while being recorded or given an intoxilyzer (breath) test.
- b. Complete all applicable forms.

**Note:** Employees should be sensitive to the fact there are health conditions (e.g., diabetic shock) that appear as intoxication. Leaving such conditions untreated could cause death or severe injury to the prisoner. Employees having reason to believe such a condition could be present shall call an ambulance to evaluate the prisoner's medical condition.

**DWI Evidence Technicians**

There are DWI evidence technicians on duty during all shifts to assist officers with their DWI cases. DWI evidence technicians' responsibilities shall include:

- a. Administering breath tests.
- b. Drawing blood on DWI suspects.
- c. Administering standardized field sobriety tests.
- d. Assisting officers with completing paperwork.
- e. Maintaining a sign-in log sheet and blood kit sign-out log.

**Violent DWI Prisoners**

Violent prisoners shall remain handcuffed and shall be taken directly to a designated jail facility. Violent prisoners shall not be taken into a video room to be recorded or given a breath test. In such cases, the arresting officer shall complete applicable Driver Improvement Center (DIC) forms, indicating the prisoner refused a breath test and document in the incident report why a breath or blood specimen was not obtained.

**2 INTOXILYZER (BREATH TEST)**

Before requesting a breath specimen, the arresting officer shall complete a criminal background check on the suspect to determine whether or not the suspect qualifies for a mandatory specimen (see section 4, *Blood Test*). If the suspect does qualify for a mandatory blood specimen then the arresting officer shall request blood from the suspect and execute a *Mandatory Blood Specimen* form (THP-51) only in the event the suspect refuses to provide the required specimen.

If the arresting officer is assisted by an evidence technician at the DWI processing facility, the officer must remain present during the entire time the evidence technician is conducting the breath test and video recording. Since the evidence technician is not a sworn peace officer, the arresting officer shall read the *Statutory Warning* (DIC-24) to the suspect on the video recording and request the specimen of breath and/or blood.

The arresting officer is responsible for completing the following procedures prior to the administration of a breath test from a suspect:

- a. Read aloud the DWI statutory warning.
- b. Furnish the prisoner with a copy of the DIC-24 (*Statutory Warning*).
- c. Explain the charges.
- d. Request the taking of a specimen of breath or blood in order to analyze and determine the alcohol concentration.

Once a specimen is requested and the prisoner provides a breath specimen of 0.08 or higher, the arresting officer shall complete the *Peace Officer's Sworn Report* form (DIC-23). The arresting officer shall also complete the *Notice of Suspension* form (DIC-25) and give the prisoner the Driver's Copy, which outlines the procedures for requesting an administrative hearing regardless if the suspect has a license or not.

### **Refusal or Failure of Breath Test**

In DWI arrests in which a person either refuses to be tested or fails the breath test, the arresting officer is required to confiscate the person's Texas driver license, if the person has a license, and issue a DIC-25 (*Notice of Suspension*) to any person refusing to provide a specimen.

When the license is confiscated, the arresting officer shall paper clip (not staple) the Texas driver license to the Administrative License Revocation (ALR) forms and submit the package to the Vehicular Crimes Division hold desk. The ALR forms include the following:

- a. *Peace Officer's Sworn Report* (DIC-23).
- b. *Statutory Warning* (DIC-24).
- c. *Notice of Suspension* (DIC-25). The officer shall give the prisoner the Driver's Copy, which outlines the procedures for requesting an administrative hearing regardless if the suspect had a license or not.
- d. Other equivalent forms applicable to a commercial vehicle (DIC-55, DIC-57).

If the suspect refuses to be processed or provide a breath specimen, then one of the following, as applicable, shall occur:

- e. If the arresting officer in the field is equipped with a body worn camera, the officer shall record the refusal on the body worn camera by reading aloud the *Statutory Warning* (DIC-24) verbatim. The officer shall give the suspect an opportunity to sign the DIC-24 indicating that the suspect has refused to provide a specimen. If the suspect does not sign the DIC-24, the officer shall check the box on the DIC-24 indicating that the suspect refused to provide a specimen and also refused to sign the DIC-24. The officer shall document in the incident report that the refusal was recorded on the officer's body worn camera. The officer shall proceed to a designated DWI facility, complete the process, and file the appropriate charge.
- f. If the suspect refuses to provide a breath specimen while being processed at a designated DWI facility, the intoxilyzer operator shall give the suspect an opportunity to sign the DIC-24 indicating that the suspect has refused to provide a specimen. If the suspect does not sign the DIC-24, the intoxilyzer operator shall check the box indicating that the prisoner refused to provide a specimen and also refused to sign the DIC-24.

Officers shall follow the procedures listed in section 5 of this General Order when handling prisoners who pass the breath test and yet appear to be impaired.

### **3 VIDEO SESSION**

The arresting officer shall notify a DWI evidence technician when a prisoner is ready to be video recorded to complete the intoxilyzer procedures. The following procedures shall be completed:

- a. The reading of the DIC-24 and all breath testing shall be video recorded. It is not required to record the 15-minute waiting period.
- b. All blood specimens drawn at an HPD DWI facility shall be video recorded.
- c. If possible, blood specimens taken at an off-site facility or hospital shall be recorded.

At no time shall a suspect be forced into the video room. If the suspect refuses to enter the room, such actions shall be noted in the officer's incident report. The officer shall then book the suspect on all appropriate charges.

#### **Video Operator's Responsibilities**

The video operator shall follow the guidelines and requirements set forth by the Traffic Enforcement Division and the District Attorney's Office. At the end of the video recording the operator shall classify the recording in the appropriate manner in accordance with the media that captured the recording.

#### **Arresting Officer's Responsibilities**

The arresting officer shall accompany the suspect into the video room and remain in the room during the entire video recording session.

After leaving the video room, the arresting officer shall:

- a. Enter the prisoner's hold card and charge information under the "Arrest" tab in the department's Records Management System (RMS) and jail initialize.
- b. Obtain the prisoner's criminal history and driver license records including FBI, state ID, and SPN numbers, if available.
- c. Complete the incident report including the "DWI" tab.
- d. Enter charges in the District Attorney Intake Management System (DIMS).
- e. Book the suspect into jail.

The arresting or transporting officer shall deliver all original completed forms including the DIC forms, breath test slip, and video tracking form to the Vehicular Crimes Division hold desk.

#### 4 BLOOD TEST

##### Mandatory Blood Specimen

If a suspect refuses the officer's request for a voluntary blood sample after the officer reads the suspect a DIC-24 (*Statutory Warning*), a blood sample shall be required from a suspect if any of the following circumstances existed regarding the same incident:

- a. At the time the suspect was arrested, the officer reasonably believed that a person died or may die as a direct result of the crash and the suspect's intoxication was the cause of the crash.
- b. At the time the suspect was arrested, the officer reasonably believed that a person other than the suspect had experienced serious bodily injury as a direct result of the crash and the suspect's intoxication was the cause of the crash.
- c. At the time the suspect was arrested, the officer reasonably believed that someone other than the suspect suffered bodily injury and was transported from the scene for medical treatment.
- d. The officer had information from a credible source that the suspect has two or more prior convictions for DWI, flying while intoxicated, boating while intoxicated, or assembling or operating an amusement ride while intoxicated.
- e. The officer had information from a credible source that the suspect had a child 14 years of age or younger in the vehicle at the time the suspect committed the offense.
- f. The officer had information from a credible source that the suspect has been convicted of DWI with a child passenger, intoxication assault, or intoxication manslaughter.

If a specimen is required, the arresting officer shall request the taking of a blood specimen. If the suspect refuses a blood specimen, the officer shall complete and submit a *Mandatory Blood Specimen* form (THP-51). The officer shall then contact a District Attorney and complete an affidavit for a search warrant blood draw. Once the warrant is completed, notarized, and signed by a judge, the officer shall have the suspect's blood drawn. Requested or required blood samples shall be drawn by only qualified medical personnel on duty at a hospital or medical facility, a qualified technician provided by the District Attorney's Office, or a qualified technician at an HPD DWI processing facility.

There may be certain situations or exigent circumstances in which an officer cannot wait for a warrant prior to having blood drawn. In these cases, the officer shall contact the on-call Vehicular Crimes Prosecutor prior to having blood drawn.

DWI blood vials shall be tagged at the Property Division located at 1202 Washington or other approved location. This shall allow for timely refrigeration of the evidence prior to lab analysis.

##### Refusal of Blood Test

If a suspect refuses to provide a blood specimen at the request of the officer and further refuses to allow the taking of a specimen when there is a mandatory requirement or search

warrant for a specimen, then the officer shall use the minimal force necessary in order to obtain the specimen.

### **No Refusal Programs**

The District Attorney's Office for the county of arrest may conduct a "No Refusal Night." On these nights the suspect shall be processed as requested by the District Attorney's Office and the officer shall complete an application for a search warrant for a specimen of the suspect's blood if the suspect refuses to provide the legally required specimen. The District Attorney's Office may provide a qualified technician that can be used to execute the blood warrant, and if they do not, the officer shall proceed to a hospital or medical facility where a qualified technician is on duty.

### **Blood Search Warrants**

During any shift, officers shall contact the Intake Division at the District Attorney's Office for assistance completing an application for a blood warrant. In these cases, the officer shall be required to take the prisoner to a hospital or medical facility **if there is not a DWI evidence technician or no-refusal nurse on duty**. The officer shall be responsible for returning the warrant to the district clerk's office after it has been executed.

During "No Refusal Nights" the District Attorney's Office shall provide the personnel needed to secure a warrant and execute the warrant at the location where the "No Refusal Night" is implemented.

### **DWI Suspect's Personal Blood Sample**

If a DWI prisoner has already given a sample of breath, the prisoner may request a blood sample be drawn by a person of the suspect's own choosing if all of the following conditions are met:

- a. The sample is taken by a physician, registered nurse, or qualified technician.
- b. The prisoner agrees to pay for the expense of the drawing and analysis of the sample.
- c. The blood sample is taken within two hours following the arrest.
- d. The person drawing the blood sample must come to the prisoner to take the sample. The person must also furnish the required equipment to properly take the sample.
- e. The officer shall obtain one of the specimens drawn as evidence to be tested by the department. The specimen shall be tagged according to HPD policy set forth in regards to any other blood specimen drawn.

## **5 SUSPECTS REGISTERING LESS THAN 0.08 BREATH-ALCOHOL CONTENT**

If a suspect has less than 0.08 breath-alcohol content and the arresting officer believes the prisoner is under the influence of another substance, the officer shall contact the Command Center. The Command Center shall attempt to arrange for the prisoner to be evaluated by a

department Drug Recognition Expert (DRE). The evaluation shall be conducted at a designated DWI facility with a video room. A DRE shall not be requested until after a breath test has been administered. There is no requirement that a suspect's breath specimen be 0.00 for a DRE to be called, only that the impairment does not appear to match the test result. If the suspect refuses a breath test, the arresting officer shall contact an assistant district attorney to apply for a search warrant.

If a department DRE is unavailable, a supervisor shall contact the Harris County Sheriff's Office or the Texas Department of Public Safety dispatcher to determine if a DRE is available through these agencies. When a DRE from another agency conducts an evaluation, the evaluation shall be conducted at a location determined by the DRE.

If the suspect passes a DRE's evaluation and probable cause exists for filing other charges, the arresting officer shall contact an assistant district attorney for approval to file the other charges.

If the suspect passes all tests and evaluations and has a level of alcohol less than 0.05 and no other charges are filed, the arresting or transporting officer shall make an effort to recover the suspect's vehicle. If the suspect has a level of alcohol greater than 0.05, officers shall not attempt to recover the suspect's vehicle. The DWI traffic case report along with the DIC-24 and breath test slip shall be completed and submitted with the word "PASSED" written on the front of the report.

An operator of a commercial vehicle with a Gross Vehicle Weight Rating (GVWR) of 26,001 pounds or greater shall be read a DIC-55 (*Statutory Warning*), which states that the driver license shall be disqualified for a refusal or a test result of 0.04 or greater. The officer shall confiscate the driver license and provide him with a DIC-57 (*Notice of Disqualification*), and provide the Vehicular Crimes Division hold desk with the license and appropriate paperwork to be forwarded to the Texas Department of Public Safety (DPS).

## **6 DRUG RECOGNITION EXPERT (DRE)**

A DRE shall be called for all fatal crashes when the at-fault driver is not deceased. If fault cannot be determined prior to a crash reconstruction being completed, the DRE shall be called. Once a determination has been made that a DRE is needed at the scene, the driver/suspect shall be detained as a possible criminal suspect. Before, during, and after the completion of the evaluation, the DRE is responsible for communicating directly with the Vehicular Crimes Prosecutor to determine any charges. If the suspect is intoxicated, it is the responsibility of the DRE to gather the information necessary to file the appropriate charges.

A DRE shall be called if an HPD employee is possibly under the influence of an intoxicant or at the request of an Internal Affairs Division (IAD) supervisor.

Cases involving fatal crashes or IAD investigations shall be handled by only DREs meeting qualifications set forth by the Agency DRE Coordinator. If one is not on duty, an off-duty DRE shall be called. An updated list of qualified DREs shall be kept at the Command Center. The Agency DRE Coordinator is responsible for updating the list.

## 7 URINE SPECIMEN

If a suspect refuses to take the intoxilyzer test or the blood test, but submits to having a urine sample taken, a refusal shall be indicated on the DIC-23, DIC-24, and DIC-25 for the tests refused by the prisoner.

A urine specimen may be taken from a prisoner when any of the following are true. The suspect:

- a. Consents.
- b. Was driving any commercial vehicle.
- c. Is suspected of being under the influence of drugs and has been examined by a DRE who then requests the urine sample.

## 8 CHILDREN AND MINORS DRIVING UNDER THE INFLUENCE

### DWI Suspects Under 17 Years of Age

DWI suspects under 17 years of age shall be taken to the intoxilyzer testing room and given the opportunity to submit to a breath test, but the request to give a specimen must be video recorded. If the juvenile refuses the intoxilyzer test, a blood specimen shall not be requested unless the juvenile has an attorney present. If it is a case in which a mandatory blood specimen could normally be taken, a search warrant shall be completed and the specimen shall be taken without waiting for consent from an attorney. A copy of all paperwork pertaining to the juvenile shall be turned over to the Juvenile Division. Original copies shall be turned in to the Vehicular Crimes Division hold desk.

Juveniles shall be kept separate from adults both physically and by sight and sound. The juvenile suspect and copies of all paperwork shall be turned over to the Juvenile Division after the suspect has been processed through the Traffic Enforcement Division. Additionally, officers shall follow all procedures in General Order 500-06, **Disposition of Arrested Juveniles**, when handling juveniles.

### DWI Suspects Under 21 Years of Age

Adult DWI suspects who are under 21 years of age shall be investigated the same as any other DWI suspect. If during the investigation an officer determines that the suspect does not meet the legal definition of intoxication but has any detectable amount of alcohol, the suspect should be charged with the Class C offense of Minor Driving under the Influence of Alcohol or Minor DUI. A minor commits an offense if the minor operates a motor vehicle in a public place, or a watercraft, while having any detectable amount of alcohol in the minor's system.

**Note: The following does not apply to suspects who are under 21 years of age AND have been arrested for DWI.**

If a suspect is going to be charged with Minor Driving under the Influence of Alcohol, officers shall complete the following:



- a. Read the DIC-24 to the suspect.
- b. Complete the DIC-23 and DIC-25.
- c. Provide the suspect with a copy of both the DIC-24 and DIC-25 prior to release or booking into a jail facility.
- d. Turn in all DIC paperwork with the driver license to the Vehicular Crimes Division hold desk so that it can be delivered to DPS.
- e. Confiscate the suspect's driver license if it is a Texas license.
- f. Issue a traffic citation titled "As a Minor Driving under the Influence of Alcohol."
- g. Tow the suspect's vehicle if a parent or registered owner of the suspect's vehicle cannot come to the scene.

Officers shall not allow a minor to drive away from a scene after issuing a citation for Minor DUI.

#### **Authorization for a Child's Breath or Blood Specimen**

An officer who takes a child into custody and who has reasonable grounds to believe that the child has been operating a motor vehicle in a public place while having any detectable amount of alcohol in the child's system shall do one of the following:

- a. Take the child to a place to obtain a specimen of the child's breath or blood.
- b. Arrange for intoxilyzer processing and video recording of the child in an adult processing office of a law enforcement agency.

#### **Breath Specimen: Child Can Submit or Refuse Without Attorney**

A specimen shall not be taken if a person refuses to submit to the taking of a specimen designated by a peace officer. A child taken into custody may submit to the taking of a breath specimen or refuse to submit to the taking of a breath specimen without the concurrence of an attorney, but only if the request made of the child to give the specimen and the child's response to that is video recorded.

The video recording made must be maintained until the disposition of any proceeding against the child relating to the arrest is final and it must be made available to an attorney representing the child during that period.

#### **Blood Specimen: Child Can Submit or Refuse With Attorney Only**

A child cannot voluntarily submit to a blood specimen on his own; the child and his attorney would have to agree to give up the child's rights.

**Search Warrants and Mandatory Blood Draws**

In the event that a juvenile is arrested for DWI and one of the situations exists that mandates the officer take a blood specimen, the officer shall complete the THP-51 and complete a search warrant in order to obtain a specimen of the juvenile's blood as outlined in section 4, *Blood Test*, subsection "Mandatory Blood Specimen."

If a juvenile arrested for DWI refuses to provide a specimen of breath as requested by the officer (on video), the officer may apply for a warrant to have an authorized specimen taken from the juvenile. In those instances, the juvenile shall be processed as outlined in section 4, *Blood Test*, subsection "Blood Search Warrants." Remember that the juvenile shall be kept separate from adult prisoners during this process.

**9 DWI SUSPECTS FROM OTHER LAW ENFORCEMENT AGENCIES**

Officers from other law enforcement agencies shall be allowed to process their suspects through the department's intoxilyzer and video recording system if it is not feasible for them to go to another location.

Their prisoners shall be placed in their agency's designated jail facility and no holds shall be authorized by this department.

**10 RELATED GENERAL ORDERS AND REFERENCE MATERIAL**

400-23, **Mobile Video Equipment**  
400-28, **Body Worn Cameras**  
500-01, **Effecting Arrests and Searches**  
500-06, **Disposition of Arrested Juveniles**  
600-17, **Response to Resistance**  
700-01, **Property/Evidence Control Regulations**  
**Texas Family Code Section 52.02**  
**Texas Transportation Code Section 724.013**



**Art Acevedo**  
**Chief of Police**